



FOIP FOLIO



2011 CULLITON AWARD

Given the new emphasis on FOIP compliance and building on Privacy Month for Executive Government (September 2010), the Premier's message to all provincial government employees and the recent Privacy and Access Conference, it is not too early to start thinking about a nomination for the Chief Justice E.M. Culliton Right to Know Award.

To be eligible, the body must be a Saskatchewan government institution (provincial government department, Crown Corporation, board, commission or agency) or a local authority (regional health authority, municipality, library, school, university or college). The nominee should be an agency that has demonstrated some or all of the following qualities:

- Leadership in promoting public access to the agency's information;
- Creativity in building public awareness of access to information;

- Excellence in orientation of, and service training in, employee access to information responsibilities; and/or
- Innovation in the development of tools to promote or facilitate access to information.

The deadline for nominations is **JUNE 30, 2011**. Nominations can be self-initiated or third party. The nomination should include:

- A letter of nomination (up to 1,000 words), and
- Samples of materials relevant to the nomination (testimonials or other material).

The Award will be presented during 'Right to Know' Week 2011. Nominations should be sent to the 'Right to Know' Committee, c/o #503, 1801 Hamilton Street, Regina, SK S4P 4B4 or fax: (306) 798-1603 or email: shickling@oipc.sk.ca.

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PRIVACY PEOPLE



We extend best wishes to **Aaron Orban** who has left the OIPC to become the Director, Health Information Policy and Regulation for Saskatchewan Health. We will

miss **Melanie Coyle** who is now away on a leave. The OIPC welcomes **Kevin Kane** from the Ministry of Social Services who has accepted a term position as Portfolio Officer. Congratulations also to Regina lawyer **Erin Kleisinger** who has been elected to the Executive of the Canadian Bar Association National Privacy and Access Law Section.

NOVA SCOTIA OPTS OUT OF OPT OUT

The Nova Scotia government has introduced its proposed *Personal Health Information Act*. Interestingly, Nova Scotia has not accepted the proposal advocated by two Halifax hospital foundations to allow the names and addresses of patients to be disclosed by hospitals for fundraising purposes.

Nova Scotia Health Minister, Maureen MacDonald, has stated that, "...Before access to personal information is given for fundraising purposes, we need to be sure we have a patient's or family's consent." You can read the Minister's news release at www.gov.ns.ca.

Since the Saskatchewan government passed new *Health Information Protection Act* (HIPA) fundraising regulations that gave our regional health authorities (RHAs) the option of disclosing limited personal health information (phi) to foundations

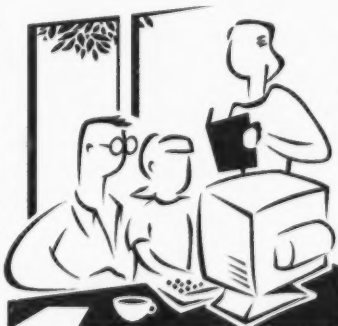
without first obtaining consent from patients, we have canvassed all RHAs to determine which approach they will take. All of the

RHAs that we have heard from to date (7 out of 13 including the Regina Qu'Appelle Health Region) have indicated that they will NOT disclose phi including name, address and the fact that the individual has recently received a service at an acute care facility in their region, to foundations unless they have prior consent from patients to do so. You can find the OIPC commentary on the new Saskatchewan fundraising regulation at www.oipc.sk.ca under the *What's New* tab.



HELP FOR PARENTS

The Media Awareness Network has released a wonderful online resource to help parents become actively involved in their children's online activities. The new tutorial for parents, *e-Parenting Tutorial: Keeping up with your kids' online activities* is available at www.media-awareness.ca. Partners in this project



are the Alberta School Councils' Association, The Alberta Library and the Canadian Home and School Federation.



ADJUDICATOR RULES AGRICULTURE FINANCIAL SERVICES CORPORATION (AFSC) DID NOT RELEASE PERSONAL INFORMATION

We are often asked questions as to whether information about crops, livestock, etc. is personal information of a farm operator. We have not had occasion to consider that in a formal Report but note that in November, an adjudicator in the Office of the Alberta Information and Privacy Commissioner (IPC) determined that the AFSC did not breach that province's *Freedom of Information and Protection of Privacy Act* (FOIP) when it released information about a farming operation. This included financial numbers, livestock, feed, equipment, crop insurance contract, insurance options, claims for payment and dollar values received for them. The Adjudicator

determined that none of the information was personal information within the meaning of the Alberta FOIP Act. You can read Order F2010-009 at www.oipc.ab.ca.



EDMONTON POLICE USED CPIC FOR IMPROPER PURPOSES



Alberta IPC, **Frank Work**, recently issued an Order dealing with a high profile case involving the Edmonton Police Service (EPS) and an Edmonton criminal defence lawyer.

The lawyer complained that his name had been run through CPIC and PROBE information systems by various members of the EPS and that this was done in violation of the Alberta FOIP Act. He also argued that EPS did not make reasonable security arrangements against such risks as unauthorized use.

Commissioner Work held that a number of the queries had been conducted for improper purposes and without authority. Commissioner Work, who

conducted a formal oral inquiry, did not believe the testimony of the police officer who conducted one of the queries. He further found that the systems in place were inadequate in terms of training of what collection was permissible, and the absence of a requirement to give reasons and to enter a reason on the computerized information system. The 24 page Order exposes both abuse of access to police information but also the kind of rigor that exists in that province's OIPC inquiry process. The full report is available at www.oipc.ab.ca.

As noted in past Annual Reports of our office, municipal police forces in Saskatchewan are not subject to FOIP or LA FOIP. Neither are RCMP detachments in municipalities although they are subject to both the federal *Privacy Act* and *Access to Information Act*.

THE POWER OF ACCESS TO INFORMATION

Stanley Tromp, a well respected FOIP researcher based in British Columbia, has recently turned his attention to the impact of the *Freedom of Information and Protection of Privacy Act* in Alberta. He has now produced *Alberta news stories made possible by FOIP Act requests*. This is a summary of 50 Alberta

news stories. The research was made possible by support from the Alberta Law Foundation. This is a supplement to his 2010 report on needed FOIP Act reforms (*The Hallmarks of Fairness*). For more information go to www3.telus.net/index100/foi.



THE VALUE OF OPEN GOVERNMENT

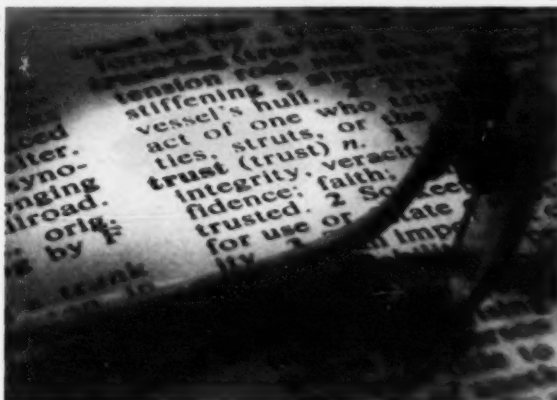
The Regina branch of the Institute of Public Administration in Canada recently organized a one day workshop on a variety of topics relevant to senior public sector employees. Commissioner **Gary**

Dickson spoke on the value of open government. A copy of his presentation is available at our website, www.oipc.sk.ca under the *Presentations* tab.

WHY PRIVACY IS OF VALUE IN HEALTH CARE DELIVERY: AN ECONOMIC ANALYSIS

Howard Simkevitz, Senior Privacy and Information Technology Counsel for Bell Canada, has written an excellent article titled *Why Privacy Matters in Health Care Delivery: A Value Proposition*. This makes the case that without privacy there can be no trust and without trust personal health information is falsified, incomplete or withheld outright. Mr. Simkevitz, in his article explores the reasons why

deficient information from patients leads to real costs for the health care system. I'd encourage all Saskatchewan health information trustees to take a moment to read this analysis. You can view the document at <http://www.computer.org/portal/web/csd1/doi/10.1109/CONGRESS.2009.16>.



LIMITING ACCESS TO YOUR HEALTH RECORDS

The British Columbia IPC has produced a useful document entitled *Limiting Access to Your Health Records*. This review outlines the options available to patients with respect to the provincial electronic

health record system, Pharmanet, health records at the Ministry of Health Services and Clinical Systems in some Health Authorities. This is available at www.oipc.bc.ca

HOW MUCH TO SEE YOUR HEALTH RECORD?

The Ontario IPC has a responsibility to deal with complaints from patients about what they are charged by their family doctor. The Ontario Commissioner, in Order HO-009, upheld the decision of the health information custodian (equivalent of a trustee in this province) not to waive fees. The Commissioner however, ordered that the fee of \$125 should be reduced to \$33.50. The fee charged exceeded

"reasonable cost recovery". This Order is available at www.ipc.on.ca. Our OIPC has a similar role under sections 39 and 41(1)(c) of HIPA although we can only make recommendations about what would be a reasonable fee. The OIPC considered fees in Reports H-2008-001 and H-2006-001. Unlike the Ontario Commissioner we have no order-making power.



YOUR FACEBOOK AND MYSPACE PROFILES MAY NOT BE SO CONFIDENTIAL



A New York State Supreme Court judge has held that what a Plaintiff has published on Facebook and Myspace profiles is fair game and can be

made available to the opposing lawyer. This can happen even when the profiles have been designated as 'private'.

What was key to the decision was that the individual must have known that there is no guarantee of complete privacy. The Court found that, in spite of her privacy settings, she consented that her personal

information could be viewed by others and therefore had no reasonable expectation of privacy. The decision in *Romano v Steelcase Inc.* is available at www.courts.state.ny.us/Reporter/3dseries/2010/2010_20388.htm.

Although this was the first case of its kind in New York, there is a string of Canadian court decisions to the same effect that were referenced by the New York Court. This includes: *Leduc v Roman*, *Kent v. Laverdiere* 2009 CanLII 16741 (ON S.C. April 14, 2009), *Bishop v. Minichiello* 2009 BCSC 358 (CanLII, April 7, 2009), *Goodridge v. King* 2007 CanLII 51161 (ON S.C. October 30, 2007) and *Kourtesis v Horis* 2007 CanLII 39367 (ON S.C. Sept. 24, 2007).

STOP. THINK. PROTECT.

The Ontario IPC, **Ann Cavoukian**, has launched a new education campaign called "Stop. Think. Protect." This initiative is targeted to Ontario's health sector including health professions and offers a number of helpful campaign tools:

Fact Sheet - Encrypting Personal Health Information on Mobile Devices

Fact Sheet - Health Care Requirement for Strong Encryption; and

Safeguarding Privacy in a Mobile Workplace.

You can view these tools at www.ipc.on.ca.



FLASH COOKIES AND COMPACT PRIVACY POLICY ERRORS



Kris Klein's very useful *Privacy Scan* periodical (October 19, 2010 issue) has published the second of two articles on 'cookies'. Cookies are a means of behavioral targeting and enable websites to remember account information and user preferences.

This article discusses flash cookies that are stored on a user's computer when an internet user installs a free internet browser plug in. The article also discusses how a Compact Privacy Policy can be used to limit the ability of a user to control cookies on sites they visit. For more information go to privacyscan@krisklein.com.



PRIVACY COMMISSIONER RELEASES DRAFT REPORT ON CONSULTATION RE: ONLINE TRACKING, PROFILING AND CLOUD COMPUTING

As a result of extensive, cross-Canada consultations in 2010 undertaken by the office of **Jennifer Stoddart**, Privacy Commissioner of Canada, a draft report is now available at www.priv.gc.ca. This 48 page document provides an excellent summary of

privacy protection in Canada, adequacies of current tools to address future privacy threats, online tracking, profiling and targeting and cloud computing. For anyone interested in these very important current privacy issues, this is a most useful read.

CONSUMER CONVENIENCE CAN'T IGNORE HEIGHTENED PRIVACY RISKS

In October, a privacy complaint report was issued by the Ontario IPC. It involved Service Ontario and a feature on its website to permit the change of a motor vehicle driver's licence address via an online transaction. The change function allowed individuals to change the address corresponding with their driver's licence and vehicle registration by inputting their driver's licence number and their current postal code. Once this information was inputted, users were asked to provide a new address, which would result in a new driver's licence being sent to the address provided.

An internal investigation undertaken by Service Ontario uncovered 93 confirmed cases of fraudulent address changes that resulted in the improper disclosure of driver's licences. In all cases the new addresses were for clubs, vacant lots or condemned houses. The address change function was voluntarily shut down. The Ontario IPC found that the measures in place to authenticate an individual changing

address were insufficient and did not meet the test of "reasonable measures to prevent unauthorized access to records". It was noted that the risk of identity theft was exacerbated by the fact that driver's licence information may be available in a number of places. Service Ontario has now implemented a number of changes to ensure robust authentication. The full report for Privacy Complaint No. PC10-36, PC10-42, and P110-3 is available at

www.ipc.on.ca.

Neither FOIP nor LA FOIP include a requirement that a government institution or local authority must take reasonable measures to protect personal information in its custody or control. Nonetheless, we do have jurisdiction to deal with improper use and disclosure as well as the obligation to ensure a record is accurate. In HIPA, the 'reasonable measures' requirement is explicit.



Remember! It's your Right to Know!





'REAL RISK OF SIGNIFICANT HARM'

A recent survey by Nymity and the Alberta IPC uncovered which privacy breaches would most likely be reported to the Alberta oversight office and to the affected individuals. Alberta's *Personal Information Protection Act* (PIPA) is the first breach notification law in the world that requires organizations to notify the Commissioner and the Commissioner will determine if the organization must notify the affected individuals.

different breach scenarios that had actually occurred in that province and invited to indicate:

What was the level of significant harm?

What was the level of real risk?

Would you notify the Commissioner?

The survey reveals that the highest level of perceived risk of significant harm (the statutory test in PIPA) was for personal health information including personal health numbers. Participants were presented with 15

Would you notify the affected individual prior to the Commissioner's instruction to do so?

The full study is available at the Nymity website: http://www.nymity.com/About_Nymity.aspx.

MARK YOUR CALENDAR!

Canadian Bar Association Privacy and Access Law Section meetings in Regina and Saskatoon. To register for any of the following section meetings call CBA at (306) 244-3898.

SASKATOON

December 13, 2010: *Privacy and Access Law Section North*, Saskatoon Club, Saskatoon at 12:00 noon. Topic and Speaker TBA

REGINA

December 13, 2010: *Privacy and Access Law Section South*, Hotel Saskatchewan, Regina at 12:00 noon. Topic and Speaker TBA

January 20—21, 2011: Western Forum on Privacy Law & Compliance—Practical Solutions for Conquering your Critical Privacy Challenges & Reducing Liability Risks, Fairmont Palliser Hotel, Calgary, Alberta. For more information visit www.canadianinstitute.com/privacywest.htm.



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